

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 2832/2018

This the 31st day of October, 2018

**Hon'ble Mr. K.N. Shrivastava, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

Sh. Rishabh Malik
S/o Sh. Rajkumar Malik
Aged about 26 years
R/o 19A, DDA MIA Flats
Metro Apartment, Jahangirpuri
Delhi – 110033.
(Candidate for the post of Warden (Male)
Post code no. 37/13) Group - C

....Applicant
(By Advocates : Mr. Nilansh Gaur)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat, I.P. Estate
New Delhi.
2. Delhi Subordinate Services Selection Board
Through its Secretary
F-18, Karkardooma Institutional Area
New Delhi.

...Respondents

(By Advocates : Mr. Anuj Kumar Sharma)

ORDER (ORAL)

Mr. K.N. Shrivastava :

Pursuant to the Advertisement No. 02/13 of Delhi Subordinate Services Selection Board (DSSSB) dated 25.06.2013, inviting applications for various posts, including the post of Warden (Male) – Post Code 37/13 in Delhi Police, the applicant applied for the said post under the OBC category. The selection

was to be done through written test and physical endurance test (PET). The written test was held on 02.03.2014. The applicant qualified the written examination by securing 116.75 marks. He was allowed to participate in PET, which also he successfully cleared. The result of the selection was published by the respondents vide impugned Annexure A-1 result notice No. 683 dated 09.07.2018. The applicant's name does not figure amongst the list of selected candidates. However, in para 14 of Annexure A-1, it is stated that the candidature of five candidates, whose roll numbers mentioned therein, are rejected under OBC category as they do not belong to OBC category (Delhi). The applicant 's name roll no.13002055 also figures in it. From the result notice, it is also observed that the last selected candidates under the OBC category had secured 86.75 marks in the written examination.

2. Aggrieved by impugned Annexure A-1 result notice, the applicant has approached the Tribunal in the instant case praying for the following relief :

“8.1 Declare the action of the respondents in rejecting the candidature of the applicant for the post of Warder (Male) vide impugned result notification at Annexure A-1 as illegal, arbitrary and Unconstitutional and as a result thereof direct the respondents to nominate the applicant for the post of Warder (Male) and to appoint the applicant as Warder (Male) with all consequential benefits.”

3. Pursuant to the notices issued, the respondents had entered appearance and filed their reply.

4. On completion of pleadings, arguments of Mr. Nilansh Gaur, learned counsel for applicant and Mr. Anuj Kumar Sharma, learned counsel for respondents were heard today.

5. Mr. Nilansh Gaur, learned counsel for applicant submitted that the applicant had submitted the OBC caste certificate issued to him by the Deputy Commissioner (North-West) District, Delhi dated 29.06.2009 at the time of applying for the post. This certificate was issued on the basis of the caste certificate issued to the father of the applicant, Sh. Rajkumar Malik by the concerned authority in the Govt. of UP, wherein it was mentioned that his father is resident of Village Phugna, Tehsil Budhana Distt. Muzaffarnagar (UP) and he belongs to JAT community, which is recognised as other backward class (OBC) in the State of UP. Learned counsel for applicant further submitted that the applicant's father is employed as Constable in Delhi Police and the applicant was born in the year 1992 in Delhi. A copy of the birth certificate issued by the concerned authority in Govt. of NCTD is also placed on record at Annexure -A-2 (colly.). He further stated that the applicant secured education in Delhi. He said that the JAT caste has been recognised as an OBC in Delhi as per notification dated 20.01.1995, and an averment to this effect has been made in para 5.4 of the OA.

6. Mr. Gaur further submitted that the applicant has furnished another caste certificate dated 23.03.2015 issued to

him by the Deputy Commissioner (North-West District), Delhi, which is placed at Annexure A-3 (colly.). This certificate clearly states that applicant resides at 19A, DDA MIA Flats, Metro Apartment, Jahangirpuri, Delhi – 110033 and that he belongs to JAT community, an OBC under GNCTD.

7. Mr. Gaur relied on the judgment of this Tribunal in **Umesh vs. Govt. of NCTD & Ors** (OA No. 3585/2016 dated 28.07.2017), wherein relying on the judgment of Hon'ble Apex Court in **Ram Kumar Gijroya vs Delhi Sub. Services Selection Bd.** (2016) 4 SSC 754, it has been held that a candidate, who appears in an examination under the OBC category and submits a caste certificate even after the last date mentioned in the advertisement, is also eligible for the selection under the OBC category.

8. Mr. Nilansh Gaur, thus, argued that taking all these documents into consideration, the applicant ought to be considered under the OBC category and on the basis of his merit position, he should be considered for the post of Warder (Male).

9. *Per contra*, Mr. Anuj Kumar Sharma, learned counsel for respondents stated that the caste certificate dated 29.06.2009 issued to the applicant was on the basis of caste certificate issued to his father by the concerned authority in the Govt. of UP.

10. Mr. Sharma referred to Annexure A-7 letter of Ministry of Health and Welfare, Govt. of India dated 08.04.2014 to the Chief

Secretaries of State Governments and Union Territories/Central Government, wherein it has been advised as under :-

“2. The Certificate will be issued irrespective of whether OBC candidate in question is included in the list of OBC pertaining to the State/U.T. to which the person has migrated. The facility does not alter the OBC status of the person in relation to the one or the other State/U.T. The OBC person on migration from the State/U.T. of his origin to another State/U.T. where his case is not in the OBC list is entitled to the concessions/benefits admissible to the OBCs from the State of his origin and Union Government but not from the State where he was migrated.”

11. Mr. Sharma, thus, tried to argue that the caste certificate dated 29.06.2009 could not have been considered for granting concession of OBC to the applicant. He also relied on the judgment of Hon'ble Delhi High Court in **Deepak Kumar & Ors. Vs District and Sessions Judge, Delhi** (192 (2012) DLT (602) (FB), wherein it has been held as under :-

“56. The Supreme Court had occasion to consider the claim of reservation for OBCs under the Constitution in *Veena's* case. The Court was alive to the fact that OBCs are notified in respect of each State. The Court had to consider the facts from an almost identical fact situation where candidates from one State claimed to be OBCs in another State or in another *Union Territory*. *Veena (supra)* pertained to the Union of Territory of Delhi. The Court held that the OBC certificate issued by one State authority or in respect of a resident of a State with his origins in the State would be inadmissible in another State of Union or Union Territory, for purpose of employment etc., and that the candidate cannot claim be an OBC in the other State....”

12. The learned counsel also relied on another judgment of Hon'ble Apex Court in **MCD vs Veena & Ors.** (Appeal (civil) 3045 of 1998 decided on 14.08.2001) wherein it has been held as under :

“7. Caste or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. “

13. Mr. Sharma, thus, argued that in terms of the aforementioned judgment of Hon’ble Apex Court and as per the Annexure A-7 letter of the Central Govt., the applicant although belongs to OBC category of State of UP and has migrated to Delhi, cannot be granted the concession as available to OBC of Delhi.

14. He further argued that the fresh Annexure A-3 (colly.) caste certificate dated 23.03.2015 submitted by the applicant cannot be taken into consideration as the same has been secured after the cut-off date of the submission of application for the post of Warder (Male) and even the applicant had applied for this certificate after the cut-off date.

15. We have considered the arguments of learned counsel for parties and perused the pleadings.

16. It is not in dispute that JAT community has been declared as OBC both in the State of UP and Union Territory of Delhi. It is also not in dispute that the applicant was born in Delhi and secured his education in Delhi. The Deputy Commission (North-west District), Delhi, while issuing the caste certificate dated 29.06.2009 on the basis of the caste certificate issued to his father by UP Govt., ought to have undertaken a thorough

verification in respect of the applicant and issued a proper caste certificate to the applicant. Instead, it would appear that the Deputy Commissioner chose a short-cut route of issuing the caste certificate to the applicant relying on another caste certificate issued to his father by UP Government.

17. Be that as it may, a fresh caste certificate has since been issued to the applicant by Govt. of NCTD on 23.03.2015, indicating clearly therein that he belongs to JAT caste and, thus, comes under OBC category. Hence, it is well established that the applicant indeed is an OBC of Delhi. We are not in the agreement with the argument of Mr. Anuj Kumar Sharma that OBC caste certificate dated 23.03.2015 issued to the applicant cannot be considered qua the Advertisement No. 2/13 of DSSSB as it has been secured after the last date of submission of the applications and has also been applied for after that date, in view of the judgment of Hon'ble Apex Court in **Ram Kumar Gijroya** of Hon'ble Apex Court.

18. The judgments of Hon'ble Delhi High Court in **Deepak Kumar** (supra) and **Veena & Ors.** (supra), are not applicable to the instant case on the grounds of facts being different.

19. In the conspectus, we hold that the applicant belongs to JAT caste, which has been notified as OBC by Govt. of NCTD, and is eligible for consideration under OBC category. Accordingly, we direct DSSSB to consider the case of the applicant under the OBC category for the post of Warder (Male)

– Post Code – 37/13 and if, he is found qualified in terms of his merit, then DSSSB shall send a letter of recommendation to the user department in Govt. of NCTD within a period of eight weeks from the date of receipt of a copy this order.

20. Accordingly OA, stands allowed. No costs.

(S.N. Terdal)
Member (J)

/anjali/

(K.N. Shrivastava)
Member (A)